

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

RACHEL SMITH, individually and on  
behalf of all others similarly situated  
  
Plaintiff,  
  
v.  
  
LUXOTTICA RETAIL NORTH  
AMERICA, INC. dba LensCrafters, AND  
EYEXAM OF CALIFORNIA, INC.,  
  
Defendant.

Case No.: 14CV366-JAH(BLM)

**SCHEDULING ORDER  
REGULATING DISCOVERY  
AND OTHER PRE-TRIAL  
PROCEEDINGS**

On **June 19, 2020**, the Court held a telephonic Early Neutral Evaluation Conference (“ENE”) in the above-entitled action. ECF No. 58. Settlement of the case could not be reached during the ENE and the Court therefore conducted a Case Management Conference pursuant to Rule 16.1(d) of the Local Rules. Id. After consulting with the attorneys of record for the parties and being advised of the status of the case, and good cause appearing, **IT IS HEREBY ORDERED:**

1. The parties shall file a joint motion for a protective order, which includes the terms of their agreement for handling confidential documents and information, on or before **July 3, 2020**.

2. Any motion to join other parties, to amend the pleadings, or to file additional

1 pleadings shall be filed by August 21, 2020.

2 3. The parties shall designate their respective class certification experts in  
3 writing by November 13, 2020. The parties must identify any person who may be used at  
4 trial to present evidence pursuant to Rules 702, 703 or 705 of the Fed. R. Evid. This  
5 requirement is not limited to retained experts. The date for exchange of rebuttal experts  
6 shall be by December 11, 2020. The written designations shall include the name, address  
7 and telephone number of the expert and a reasonable summary of the testimony the expert  
8 is expected to provide. The list shall also include the normal rates the expert charges for  
9 deposition and trial testimony.

10 4. By November 13, 2020, each party shall comply with the disclosure  
11 provisions in Rule 26(a)(2)(A) and (B) of the Federal Rules of Civil Procedure. This  
12 disclosure requirement applies to all persons retained or specially employed to provide  
13 expert testimony, or whose duties as an employee of the party regularly involve the giving  
14 of expert testimony. **Except as provided in the paragraph below, any party that fails**  
15 **to make these disclosures shall not, absent substantial justification, be permitted to**  
16 **use evidence or testimony not disclosed at any hearing or at the time of trial. In**  
17 **addition, the Court may impose sanctions as permitted by Fed. R. Civ. P. 37(c).**

18 5. Any party shall supplement its disclosure regarding contradictory or rebuttal  
19 evidence under Fed. R. Civ. P. 26(a)(2)(D) by December 11, 2020.

20 6. Any motion for class certification must be filed on or before January 29,  
21 2021.

22 7. The parties are **ORDERED** to contact the chambers of Judge Major within  
23 three days of the Court's ruling on the motion for class certification to set the remaining  
24 case deadlines.

25 8. Failure to comply with this section or any other discovery order of the court  
26 may result in the sanctions provided for in Fed. R. Civ. P. 37, including a prohibition on  
27 the introduction of experts or other designated matters in evidence.

28 9. A Mandatory Settlement Conference shall be conducted on February 10,

1 **2021 at 1:30 p.m.** in the chambers of **Magistrate Judge Barbara L. Major** located at **333**  
 2 **West Broadway, Suite 1110, San Diego, CA 92101.** All discussions at the Mandatory  
 3 Settlement Conference will be informal, off the record, privileged, and confidential.  
 4 Counsel for any non-English speaking party is responsible for arranging for the appearance  
 5 of an interpreter at the conference.

6 a. **Personal Appearance of Parties Required:** All parties, adjusters for  
 7 insured defendants, and other representatives of a party having full and complete authority  
 8 to enter into a binding settlement, as well as the principal attorneys responsible for the  
 9 litigation, must be present **in person** and legally and factually prepared to discuss  
 10 settlement of the case. Counsel appearing without their clients (whether or not counsel has  
 11 been given settlement authority) will be cause for immediate imposition of sanctions and  
 12 may also result in the immediate termination of the conference.

13 Unless there is good cause, persons required to attend the conference pursuant to  
 14 this Order shall not be excused from personal attendance. Requests for excuse from  
 15 attendance for good cause shall be made in writing at least three (3) court days prior to the  
 16 conference. Failure to appear in person at the Mandatory Settlement Conference will be  
 17 grounds for sanctions.

18 b. **Full Settlement Authority Required:** In addition to counsel who will  
 19 try the case, a party or party representative with full settlement authority<sup>1</sup> must be present  
 20 for the conference. In the case of a corporate entity, an authorized representative of the  
 21 corporation who is not retained outside counsel must be present and must have  
 22 discretionary authority to commit the company to pay an amount up to the amount of  
 23

---

24 <sup>1</sup> "Full settlement authority" means that the individuals at the settlement conference must be authorized to  
 25 explore settlement options fully and to agree at that time to any settlement terms acceptable to the parties.  
 26 Heileman Brewing Co. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have  
 27 "unfettered discretion and authority" to change the settlement position of a party. Pitman v. Brinker Int'l  
 28 Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement  
 authority to attend the conference contemplates that the person's view of the case may be altered during  
 the face to face conference. Id. at 486. A limited or a sum certain of authority is not adequate. See Nick  
v. Morgan's Foods, Inc., 270 F.3d 590, 595-97 (8th Cir. 2001).

1 Plaintiff's prayer (excluding punitive damages prayers). The purpose of this requirement  
 2 is to have representatives present who can settle the case during the course of the  
 3 conference without consulting a superior. Counsel for a government entity may be excused  
 4 from this requirement so long as the government attorney who attends the Mandatory  
 5 Settlement Conference (1) has primary responsibility for handling the case, and (2) may  
 6 negotiate settlement offers which the attorney is willing to recommend to the government  
 7 official having ultimate settlement authority.

8 c. **Confidential Settlement Statements Required:** No later than  
 9 **January 29, 2021**, the parties shall submit directly to Magistrate Judge Major's chambers  
 10 (via hand delivery or email address) confidential settlement statements no more than ten  
 11 (10) pages in length. **These confidential statements shall not be filed or served on**  
 12 **opposing counsel.** Each party's confidential statement must set forth the party's statement  
 13 of the case, identify controlling legal issues, concisely set out issues of liability and  
 14 damages, and shall set forth the party's settlement position, including any previous  
 15 settlement negotiations, mediation sessions, or mediation efforts, the last offer or demand  
 16 made by that party, and a separate statement of the offer or demand the party is prepared  
 17 to make at the settlement conference. If a specific demand or offer for settlement cannot  
 18 be made at the time the brief is submitted, then the reasons therefore must be stated along  
 19 with a statement as to when the party will be in a position to state a demand or make an  
 20 offer.

21 General statements that a party will "negotiate in good faith" is not a specific  
 22 demand or offer contemplated by this Order. It is assumed that all parties will negotiate in  
 23 good faith.

24 d. **Requests to Continue a Mandatory Settlement Conference:** Any  
 25 request to continue the Mandatory Settlement Conference or request for relief from any of  
 26 the provisions or requirements of this Order must be sought by a **written ex parte**  
 27 **application.** The application must (1) be supported by a declaration of counsel setting  
 28 forth the reasons and justifications for the relief requested, (2) confirm compliance with

Civil Local Rule 83.3(h), and (3) report the position of opposing counsel or any unrepresented parties subject to the Order. **Absent good cause, requests for continuances will not be considered unless submitted in writing no fewer than (7) days prior to the scheduled conference.**

**If the case is settled in its entirety before the scheduled date of the conference, counsel and any unrepresented parties must still appear in person, unless a written joint notice confirming the complete settlement of the case is filed no fewer than twenty-four (24) hours before the scheduled conference.**

10. The parties must review the chambers' rules for the assigned district judge and magistrate judge.

11. The dates and times set forth herein will not be modified except for good cause shown.

12. Briefs or memoranda in support of or in opposition to any pending motion shall not exceed twenty-five (25) pages in length without leave of a district court judge. No reply memorandum shall exceed ten (10) pages without leave of a district court judge. Briefs and memoranda exceeding ten (10) pages in length shall have a table of contents and a table of authorities cited.

13. Plaintiff's counsel shall serve a copy of this order on all parties that enter this case hereafter.

**IT IS SO ORDERED.**

Dated: 6/22/2020

  
Hon. Barbara L. Major  
United States Magistrate Judge